

REMARKS

The Office Action mailed September 10, 2010 has been reviewed and carefully considered. No new matter has been added.

Claims 19, 23, 24, and 26 have been amended. Claim 22 has been cancelled without prejudice. Claims 1-21 and 23-32 are pending.

For purposes of coordination of examination, Applicants wish to remind the Examiner that applications are currently undergoing examination that have related disclosed subject matter. One application is U.S. Application No. 10/569,319 entitled "METHOD AND APPARATUS FOR DECODING HYBRID INTRA-INTER CODED BLOCKS", which has claims generally directed to the decoding method and apparatus. Another application is U.S. Application No. 10/569,236 entitled "METHOD AND APPARATUS FOR ENCODING HYBRID INTRA-INTER CODED BLOCKS", which has claims generally directed to the encoding method and apparatus. Both are assigned to Examiner Emmanuel Bayard in Art Unit 2611.

In the Office Action, Claims 1-12 and 29-33 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. Initially, we note that Claim 33 was previously cancelled in the last amendment filed on July 1, 2010, and is not pending with respect to the current Office Action. Thus, only Claims 1-21 and 29-32 are actually pending before the current Office Action. Regarding the remaining claims, a telephone conference between the Applicants' representative, namely Mr. Gaspare J. Randazzo, Reg. No. 41,528, and the Examiner, namely Mr. Emmanuel Bayard, conducted on October 20, 2010, resulted in the Examiner kindly agreeing to withdraw the aforementioned 35 U.S.C. 101 rejection. The agreement reached between Mr. Randazzo and Mr. Bayard is memorialized in a telephone Interview Summary dated October 22, 2010, a copy of which is attached hereto as a reminder for the Examiner's convenience. Accordingly, it is believed that no outstanding issues remain regarding 35 U.S.C. 101 and that all pending claims satisfy the same.

Claims 1-10, 13-18, 25, and 27-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 20010055338 to Machida (hereinafter "Machida") in view of U.S. Patent No. 6,532,264 to Kahn (hereinafter "Kahn"). Claims 11-12, 19-24, and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 20050276323 to Martemyanov in view of Kahn.

The independent claims currently pending are Claims 1, 11, 13, 19, 26, and 29.

It is respectfully asserted that none of the cited references, either taken singly or in combination, teach or suggest the following limitations recited in Claim 1:

In a video encoder, a method for video encoding a block comprising:
combining a first prediction of a current block with a second prediction of a current block; wherein the first prediction of the current block is intra prediction and the second prediction of the current block is inter prediction.

Moreover, it is respectfully asserted that none of the cited references, either taken singly or in combination, teach or suggest the following limitations recited in Claim 13:

A video encoder for encoding blocks within frames of a sequence of two dimensional images, the encoder comprising: an intra-frame prediction block being operatively connected to a combining unit and for outputting a first intra prediction of a block; and an inter-frame prediction block being operatively connected to the combining unit and for outputting a first inter prediction of the block; wherein the combining unit is adapted to combine the first intra prediction and the first inter prediction and to output a hybrid intra-inter coded block.

Further, it is respectfully asserted that none of the cited references, either taken singly or in combination, teach or suggest the following limitations recited in Claim 29: "In a video encoder, a method for video encoding a block comprising: combining a first prediction type for a current block with a second prediction type for a current block; wherein the combination of the first prediction type and the second prediction type forms a hybrid prediction type."

Initially, we note that the Examiner has admitted on page 3 of the pending Office Action that "Machida fails [to teach or suggest] wherein the first prediction of the current block is intra prediction and the second prediction of the current block is inter prediction."

To cure the admitted deficiency in the teachings of Machida, the Examiner states that "Kahn teaches ~~teach~~ [sic] combining an interframe unit (see fig. 10 element 1002) with a [an – sic] intraframe unit (see fig. 10 element 1004) is functionally equivalent to the claimed (the first

prediction of the current block is intra prediction and the second prediction of the current block is inter prediction) (see col. 10, lines 5-63)” (Office Action dated 9-10-2010, pp. 3-4). In support of the same, the Examiner reasoned as follows: “[i]t would have been obvious to one of ordinary skill in the art to implement the teaching of Kahn into Machida as to calculate a composite correlation surface as taught by Kahn (see col. 10, lines 60-63)” (Office Action dated 9-10-2010, p. 4). The Applicants respectively disagree with the Examiner’s reading of Kahn.

Intra prediction and inter prediction as well-known terms of art in video compression. As is known, intra prediction involves the partitioning of a current picture (to be encoded) into a plurality of blocks where a prediction for a block in the picture is obtained by locating a matching (similar) block in that same picture. Inter prediction involves the partitioning of a current picture (to be encoded) and at least one reference picture into respective pluralities of blocks where a prediction for a block in the current picture is obtained by locating a matching (similar) block in the reference picture.

Given the language in the pending claims, including at least “a first prediction of a current block” and “a second prediction of a current block”, it is clear that the predictions referred to in the claims are block-based predictions. In contrast, Kahn is generally directed to “processing sequential images to detect image motion” (Kahn, Title) and “replace[s] block-based motion estimation with pixel-based motion estimation” (Kahn, Abstract). Thus, right at the onset, it is clear the Kahn differs from the subject matter of the pending claims, since the overall approach of Kahn is directed to pixel-based processing while the recited predictions are clearly block-based. Such difference is far from trivial, as would be readily understood by one of ordinary skill in the art.

Thus, beyond the preceding differences in overall approaches, we further note that Kahn does not teach or suggest a “prediction” such as intra prediction or inter prediction as recited in Claims 1, 13, and 29, but rather discloses “correlation surfaces”. However, a prediction as recited in Claims 1, 13, and 29 does not correspond to a correlation surface as disclosed by Kahn.

For example, unlike, the predictions explicitly recited in Claims 1, 13, and 29, which are generated for a block in a current picture, the correlation surfaces disclosed in Kahn are “generated for every pixel in a reference image” (Kahn, Abstract). Hence, one significant difference between a prediction as recited in Claims 1, 13, and 29 and a correlation surface as disclosed by Kahn is that the prediction is block-based, while the correlation surface is pixel-based. Another significant

difference between a prediction and a correlation surface is that the prediction is generated for a current block (in a current picture to be encoded), while a correlation surface is generated for a reference image. Still another significant difference between a prediction and a correlation surface is that a prediction involves a simple matching process to identify a matching (similar) block to a current block to be encoded and does not require interpolation in contrast to a correlation surface disclosed in Kahn (see, e.g., col. 10, lines 26-31, disclosing that “[b]ecause the intraframe correlation is performed using two spatially nonaligned fields (e.g., one which includes the even numbered scan lines of the video frame, and another which includes the odd numbered scan lines of the video frame), a vertical interpolation is performed on field F_t using a vertical interpolation unit 1006.”). As is known, interpolation is a computationally intensive process and, hence, may be considered a detriment to the approach of Kahn, particularly in applications involving limited computational resources.

In fact, we significantly note that the entire disclosure of Kahn does not include even one occurrence of the words “prediction” or “predict”, as Kahn is not concerned with the same, instead providing his pixel-based correlation surface approach which does not involve predictions as known to those of skill in the art. This is not surprising, as predictions are used to encode a picture, and Kahn is concerned with image processing, but not necessarily image encoding. For example, we also significantly note that the entire disclosure of Kahn does not include even one occurrence of the words “encode” or “encoding”. Rather, Kahn mentions applications such as creating synthetic images that allow for conversion from one frame rate to another.

Hence, since a prediction as recited in Claims 1, 13, and 29 does not correspond to a correlation surface as disclosed by Kahn, the combining of an intra correlation surface with an inter correlation surface as disclosed by Kahn does not correspond to combining an intra prediction with an inter prediction as essentially recited in Claims 1, 13, and 29.

Thus, Kahn fails to cure the aforementioned deficiencies of Machida admitted to by the Examiner and, hence, fails to teach or suggest all the above reproduced limitations of Claims 1, 13, and 29.

Moreover, we note that the Examiner has asserted that Machida teaches combining a first prediction of a current block with a second prediction of a current block. However, this teaching of Machida can simply be considered to be similar to bi-prediction, where TWO PREDICTIONS OF

THE SAME TYPE ARE COMBINED. That is, in Machida, two predictions of the same type (inter OR intra) are combined in the coding apparatus of Figure 3. For example, an intra/inter judging means 304 “judg[es] whether the macro block of the present frame is processed by intra-coding or inter-coding” (see, e.g., Machida, para. [0050]). To that end, we respectfully point out that such intra/inter judging means 304 in Machida does NOT include an output judgment that indicates a combination of intra-coding and inter-coding for the same macroblock or a hybrid prediction type or a hybrid intra-inter coded block. Rather, the only two output judgments by the intra/inter judging means 304 of Machida are intra-coding OR inter-coding.

Moreover, paragraph [0045] of Machida, which is directed to Figure 3 thereof, discloses that “[a] third embodiment of the invention is a coding method of moving image signal for inter-coding the present processing pixel block when the correlation is high between two or more predicted images compensated of motion by two or more motion vectors, and intra-coding the present processing pixel block when the correlation is low between two or more predicted images”. Hence, Machida codes a present processing pixel block either using inter coding OR intra coding, depending on the correlation to predicted images.

Hence, Machida fails to teach or even remotely suggest combining an intra prediction and an inter prediction as recited in independent Claims 1, 13, and 29. Given that bi-prediction involves two (inter) predictions of the same type and that Machida involves two predictions of the same type, it would actually seem counterintuitive, particularly in consideration of the preceding, to try and combine two different types of prediction such as inter prediction and intra prediction as recited in the pending independent claims.

Accordingly, by restricting the combining of predictions to only predictions of the same type, Machida basically teaches away from the explicit limitations recited in Claims 1, 13, and 29. However, as set forth in MPEP §2145.X.D.1, “It is improper to combine references where the references teach away from their combination.” *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) (The claimed catalyst which contained both iron and an alkali metal was not suggested by the combination of a reference which taught the interchangeability of antimony and alkali metal with the same beneficial result, combined with a reference expressly excluding antimony from, and adding iron to, a catalyst.).

Additionally, in view of the ultimate use of a single type of prediction (either inter or intra) in Machida, the proposed modification of Machida by the Examiner with the teachings of Kahn would essentially change the principle of operation of Machida, which is prohibited under MPEP §2143. MPEP §2143.01 is reproduced in pertinent part as follows:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the “suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.” 270 F.2d at 813, 123 USPQ at 352.).

In the instant case, the principle of operation of Machida selectively uses only one type of prediction, namely either intra prediction OR inter prediction. Hence, assuming arguendo that Kahn does teach combining an intra prediction with an inter prediction (even though Kahn clearly does not provide such teaching, for at least the reasons set forth above), the proposed modification of Machida to be able to combine an intra prediction with an inter prediction would change the principle of operation of Machida, which is prohibited by MPEP 2143. Hence, for at least the preceding reason, the proposed combination is improper in the first place, and should be withdrawn.

Thus, neither Machida nor Kahn, taken singly or in combination, teach or suggest all of the above reproduced limitations of Claims 1, 13, and 29. Accordingly, Claims 1, 13, and 29 are patentably distinct and non-obvious over Machida and Kahn for at least the preceding reasons.

We will now address independent Claims 11, 19, and 26. At the onset, we note that independent Claims 11, 19, and 26 are similar to previously argued independent Claims 1, 13, and 29 in that all such claims involve encoding by combining an intra prediction and an inter prediction. Accordingly, given that the same references were cited against all of these claims, we respectfully argue that Claims 11, 19, and 26 are patentably distinct and non-obvious over the cited references for at least the same reasons as set forth above regarding Claims 1, 13, and 29. Nonetheless, we will specifically address Claims 11, 19, and 26 as follows.

It is respectfully asserted that none of the cited references, either taken singly or in combination, teach or suggest the following limitations recited in Claim 11:

In a video encoder, a method of video encoding for compressing and encoding frames of a two-dimensional image sequence for transmission comprising: dividing a frame of the image sequence into blocks, selecting blocks and encoding the selected blocks in a bi-predictive hybrid intra-inter encoding mode into a bitstream for transmission.

Moreover, it is respectfully asserted that none of the cited references, either taken singly or in combination, teach or suggest the following limitations recited in Claim 19:

A video encoder for compressing and encoding frames of a two dimensional image sequence for transmission, the video encoder being adapted to select blocks from at least one frame of the image sequence and to encode the selected blocks by combining a first prediction and a second prediction, wherein the encoder is further adapted to select for encoding one of the selected blocks, between an intra encoding mode of the related art, an inter encoding mode of the related art, and a bi-predictive hybrid intra-inter encoding mode.

Further, it is respectfully asserted that none of the cited references, either taken singly or in combination, teach or suggest the following limitations recited in Claim 26:

A multimedia terminal, comprising a video encoder adapted to encode a digital video sequence using motion compensated prediction, said digital video sequence comprising a number of frames, wherein the video encoder is adapted to select blocks from at least one frame of the image sequence and to encode the selected blocks; wherein encoding each of the blocks includes combining a first prediction and a second prediction, wherein the encoder is further adapted to select for encoding one of the selected blocks, between an intra encoding mode of the related art, an inter encoding mode of the related art, and a bi-predictive hybrid intra-inter encoding mode.

Initially, we note that the Examiner has admitted on page 9 of the pending Office Action that “Martemyanov fails to explicitly teach encoding the selected blocks in a bi-predictive hybrid intra-inter encoding mode into a bitstream for transmission”.

To cure the admitted deficiency in the teachings of Martemyanov, the Examiner states that “Kahn teaches encoding the selected blocks in a bi-predictive hybrid intra-inter encoding mode into a bitstream for transmission (see fig. 10 elements 1002 and 1004 and col. 10, lines 5-63) (Office Action dated 9-10-2010, p. 9). In support of the same, the Examiner reasoned as follows: “[i]t would have been obvious to one of ordinary skill in the art to implement the teaching of Kahn into Martemyanov as to calculate a composite correlation surface as taught by Kahn (see col. 10, lines 60-63). The Applicants respectively disagree with the Examiner’s reading of Kahn.

Kahn does not teach or suggest a “bi-predictive hybrid intra-inter encoding mode” as recited in Claims 11, 19, and 26, but rather discloses “correlation surfaces” and a “composite correlation surface” obtained there from. However, a bi-predictive hybrid intra-inter encoding mode as recited in Claims 11, 19, and 26 does not correspond to a correlation surface or a composite correlation surface as disclosed by Kahn.

For example, unlike, the bi-predictive hybrid intra-inter encoding mode explicitly recited in Claims 11, 19, and 26, which is used to encode a block in a current picture, the correlation surfaces

disclosed in Kahn are “generated for every pixel in a reference image” (Kahn, Abstract). Hence, one significant difference between the bi-predictive hybrid intra-inter encoding mode as recited in Claims 11, 19, and 26 and a correlation surface (or composite correlation surface) as disclosed by Kahn is that the bi-predictive hybrid intra-inter encoding mode is block-based, while the correlation surface (or composite correlation surface) is pixel-based. Another significant difference between the bi-predictive hybrid intra-inter encoding mode and a correlation surface (or a composite correlation surface) is that the bi-predictive hybrid intra-inter encoding mode is used for (to encode) a current block (in a current picture to be encoded), while a correlation surface (or composite correlation surface) is generated for a reference image. Still another significant difference between the bi-predictive hybrid intra-inter encoding mode and a correlation surface (or composite correlation surface) is that the bi-predictive hybrid intra-inter encoding mode involves the use of predictions that are determining using a simple matching process to identify a matching (similar) block to a current block to be encoded and does not require interpolation in contrast to a correlation surface (or composite correlation surface) disclosed in Kahn (see, e.g., col. 10, lines 26-31, disclosing that “[b]ecause the intraframe correlation is performed using two spatially nonaligned fields (e.g., one which includes the even numbered scan lines of the video frame, and another which includes the odd numbered scan lines of the video frame), a vertical interpolation is performed on field F_i using a vertical interpolation unit 1006.”). As is known, interpolation is a computationally intensive process and, hence, may be considered a detriment to the approach of Kahn, particularly in applications involving limited computational resources.

In fact, we significantly note that the entire disclosure of Kahn does not include even one occurrence of the words “encode” or “encoding”, despite the Examiner’s asserted opinion as to what Kahn discloses (see above). Rather, Kahn mentions applications such as creating synthetic images that allow for conversion from one frame rate to another.

Hence, the bi-predictive hybrid intra-inter encoding recited in Claims 11, 19, and 26 does not correspond to a correlation surface (or composite correlation surface) as disclosed by Kahn for at least the preceding reasons.

Thus, Kahn fails to cure the aforementioned deficiencies of Martemyanov admitted to by the Examiner and, hence, fails to teach or suggest all the above reproduced limitations of Claims 11, 19, and 26.

Returning to Martemyanov, while cited Figure 3 of Martemyanov is directed to a macroblock encoding unit, we note that such macroblock encoding unit in Martemyanov is not disclosed as having the capability to combine an intra prediction and an inter prediction or use a bi-predictive hybrid intra-inter encoding mode as essentially recited in Claims 11, 19, and 26, nor does the macroblock encoding unit of Figure 3 even have the means for making such combination and hence using such hybrid intra-inter encoding mode, as no combiner or similar functioning device is shown in Figure 3 as receiving both of such disparate types of predictions, namely an intra prediction and an inter prediction. For example, element 54 of Figure 3 of Martemyanov, namely the element referred to as “choosing macroblock type and encoding settings”, functions as its name suggests, and performs no combining or similar functions as essentially recited in Claims 11, 19, and 26. This is because only one type of prediction is chosen for a macroblock (see, e.g., Martemyanov, para. [0038], “[e]ach macroblock can be intra or inter coded”(emphasis added)) as per conventional encoding schemes and, hence, no combining of intra prediction and inter prediction are even remotely suggested, in contrast to the subject matters of Claims 1, 13, and 29.

Of course, none of this is surprising, as even the Examiner has admitted that “Martemyanov fails to explicitly teach encoding the selected blocks in a bi-predictive hybrid intra-inter encoding mode into a bitstream for transmission”.

Accordingly, by restricting the combining of predictions to only predictions of the same type, Martemyanov basically teaches away from the explicit limitations recited in Claims 11, 19, and 26. However, as set forth in MPEP §2145.X.D.1, “It is improper to combine references where the references teach away from their combination.” *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) (The claimed catalyst which contained both iron and an alkali metal was not suggested by the combination of a reference which taught the interchangeability of antimony and alkali metal with the same beneficial result, combined with a reference expressly excluding antimony from, and adding iron to, a catalyst.).

Additionally, in view of the ultimate use of a single type of prediction (either inter or intra) in Martemyanov, the proposed modification of Martemyanov by the Examiner with the teachings of Kahn would essentially change the principle of operation of Martemyanov, which is prohibited under MPEP §2143. MPEP §2143.01 is reproduced in pertinent part as follows:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.).

In the instant case, the principle of operation of Martemyanov selectively uses only one type of prediction, namely either intra prediction OR inter prediction. Hence, assuming *arguendo* that Kahn does teach combining an intra prediction with an inter prediction (even though Kahn clearly does not provide such teaching, for at least the reasons set forth above), the proposed modification of Martemyanov to be able to combine an intra prediction with an inter prediction would change the principle of operation of Machida, which is prohibited by MPEP 2143. Hence, for at least the preceding reason, the proposed combination is improper in the first place, and should be withdrawn.

Thus, neither Martemyanov nor Kahn, taken singly or in combination, teach or suggest all of the above reproduced limitations of Claims 1, 19, and 26. Accordingly, Claims 1, 19, and 26 are patentably distinct and non-obvious over Martemyanov and Kahn for at least the preceding reasons.

The failure of an asserted combination to teach or suggest each and every feature of a claim remains fatal to an obviousness rejection under 35 U.S.C. § 103. Section 2143.03 of the MPEP requires the "consideration" of every claim feature in an obviousness determination. To render a claim unpatentable, however, the Office must do more than merely "consider" each and

every feature for this claim. Instead, the asserted combination of the patents must also teach or suggest *each and every claim feature*. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) (emphasis added) (to establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art). Indeed, as the Board of Patent Appeal and Interferences has recently confirmed, a proper obviousness determination requires that an Examiner make "a searching comparison of the claimed invention - *including all its limitations* - with the teaching of the prior art." See *In re Wada and Murphy*, Appeal 2007-3733, citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis in original). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious" (MPEP §2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Hence, Claims 1, 11, 13, 19, 26, and 29 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above.

"If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious" (MPEP §2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Claims 2-10 and 27-28, 12, 14-18 and 25, 20-24, and 30-32 directly or indirectly depend from Claims 1, 11, 13, 19, 26, and 29, respectively, and thus include all the limitations of Claims 1, 11, 13, 19, 26, and 29, respectively. Accordingly, Claims 2-10 and 27-28, 12, 14-18 and 25, 20-24, and 30-32 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above with respect to Claims 1, 11, 13, 19, 26, and 29, respectively.

Reconsideration of the rejection is respectfully requested.

In view of the foregoing, Applicants respectfully request that the rejections of the claims set forth in the Office Action of September 10, 2010 be withdrawn, that the pending claims be allowed, and that the case proceed to early issuance of Letters Patent in due course.

CUSTOMER NO.: 24498
Serial No.: 10/569,236
Office Action dated: September 10, 2010

PATENT
PU030258

It is believed that no further additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicants' Deposit Account No. 07-0832.

Respectfully submitted,

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Date: October 27, 2010



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10/569,236	02/22/2006	Alexandros Tourapis	PU030258	7832
24498	7590	10/22/2010		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Interview Summary

Application No.

10/569,236

Applicant(s)

TOURAPIS ET AL.

Examiner

Emmanuel Bayard

Art Unit

2611

All participants (applicant, applicant's representative, PTO personnel):

(1) Emmanuel Bayard.

(3) _____.

(2) Gaspere Randazzo.

(4) _____.

Date of Interview: 20 October 2010.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal (copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.

If Yes, brief description: _____.

Claim(s) discussed: 1 and 29.

Identification of prior art discussed: _____.

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Based on the applicant's arguments regarding the 101 rejection, where he refers to MPEP section 2111.02(I) which states that "any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation", as well as the portions of the specifications in support of the rejected claims satisfying the requirements of 35 U.S.C. 101, Examiner has agreed to withdraw the 101 rejection.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Emmanuel Bayard/
Primary Examiner, Art Unit 2611

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.